

§41.47

37 CFR Ch. I (7–1–08 Edition)

the date of the supplemental examiner's answer.

(c) Extensions of time under §1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See §1.136(b) of this title for extensions of time to reply for patent applications and §1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

EFFECTIVE DATE NOTE: At 73 FR 32976, June 10, 2008, §41.43 was removed, effective December 10, 2008.

§41.47 Oral hearing.

(a) An oral hearing should be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as appeals decided after an oral hearing.

(b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in §41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer.

(c) If no request and fee for oral hearing have been timely filed by appellant as required by paragraph (b) of this section, the appeal will be assigned for consideration and decision on the briefs without an oral hearing.

(d) If appellant has complied with all the requirements of paragraph (b) of this section, a date for the oral hearing will be set, and due notice thereof given to appellant. If an oral hearing is held, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. A hearing will be held as stated in the notice, and oral argument will ordinarily be limited to twenty minutes for appellant and fifteen minutes for the primary examiner unless otherwise ordered.

(e)(1) Appellant will argue first and may reserve time for rebuttal. At the oral hearing, appellant may only rely on evidence that has been previously

entered and considered by the primary examiner and present argument that has been relied upon in the brief or reply brief except as permitted by paragraph (e)(2) of this section. The primary examiner may only rely on argument and evidence relied upon in an answer or a supplemental answer except as permitted by paragraph (e)(2) of this section.

(2) Upon a showing of good cause, appellant and/or the primary examiner may rely on a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(f) Notwithstanding the submission of a request for oral hearing complying with this rule, if the Board decides that a hearing is not necessary, the Board will so notify appellant.

(g) Extensions of time under §1.136(a) of this title for patent applications are not applicable to the time periods set forth in this section. See §1.136(b) of this title for extensions of time to reply for patent applications and §1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

EFFECTIVE DATE NOTE: At 73 FR 32976, June 10, 2008, §41.47 was revised, effective December 10, 2008. For the convenience of the user, the revised text is set forth as follows:

§41.47 Oral hearing.

(a) *Request for oral hearing.* If appellant desires an oral hearing, appellant must file, as a separate paper, a written request captioned:

"REQUEST FOR ORAL HEARING".

(b) *Fee.* A request for oral hearing shall be accompanied by the fee required by §41.20(b)(3) of this part.

(c) *Time for filing request for oral hearing.* Appellant must file a request for oral hearing within two months from the date of the examiner's answer.

(d) *Extension of time to file request for oral hearing.* A request for an extension of time shall be presented as a petition under §41.3 of this part.

(e) *Date for oral hearing.* If an oral hearing is properly requested, the Board shall set a date for the oral hearing.

(f) *Confirmation of oral hearing.* Within such time as may be ordered by the Board, appellant shall confirm attendance at the oral hearing. Failure to timely confirm attendance will be taken as a waiver of any request for an oral hearing.

(g) *List of terms.* At the time appellant confirms attendance at the oral hearing, appellant shall supply a list of technical terms